

**In re:**

## **FRA TERNAL COMPOSITE SERVICE, INC.,**

**Bkr. No. 05-61438  
Chapter 11**

## **Debtor.**

## NATIONAL JUDGMENT RECOVERY, LLC,

**Appellant,**

-V-

6:07-CV-0214

## FATERNAL COMPOSITE SERVICE, INC.

## **Appellee.**

## APPEARANCES.

Bond, Schoeneck & King, PLLC  
Camille Wolnik Hill, Esq., of counsel  
Stephen A. Donato, Esq., of counsel  
One Lincoln Center  
Syracuse, New York 13202-1355  
Attorneys for Appellant

Hodgson Russ LLP  
Richard L. Weisz, Esq., of counsel  
677 Broadway, Suite 301  
Albany, New York 12207  
Attorneys for Appellee

## **Hon. Norman A. Mordue, Chief U.S. District Judge:**

## **MEMORANDUM-DECISION AND ORDER**

Appellee moves (Dkt. No. 5) to dismiss this appeal from an order of Hon. Stephen D. Gerling, Chief United States Bankruptcy Judge. Appellee argues that the appeal should be dismissed for failure to prosecute and/or on the ground of mootness. Appellant has taken no

action with respect to this appeal since it filed the Notice of Appeal and Designation of Record more than 10 months ago. Appellant has not filed its brief on the appeal or sought an extension of time, despite this Court's scheduling notice directing that the brief be filed by April 9, 2007. Appellant has submitted no opposition to this motion, nor has it requested further time to do so.

Based on the record, including the affidavit from appellee's counsel regarding the progress of the matter in Bankruptcy Court, this Court finds that appellant has had ample time to prosecute its appeal; that appellee's motion gave appellant clear notice that its failure to proceed could result in dismissal of the appeal; that appellant has had ample time to oppose the motion; that there is no evidence that appellant intends to oppose the motion or prosecute the appeal; and that matters have proceeded in Bankruptcy Court to the point that prejudice to appellee would result if the appeal is not dismissed. Accordingly, the Court in its discretion grants the motion to dismiss for failure to prosecute. Moreover, appellee has demonstrated that the appeal is now moot.

It is therefore

ORDERED that appellee's motion (Dkt. No. 5) to dismiss the appeal is granted; and it is further

ORDERED that the appeal is dismissed.

IT IS SO ORDERED.

January 11, 2008  
Syracuse, New York

  
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Norman A. Mordue  
Chief United States District Court Judge